

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

MICHAEL GARCIA,

Defendant.

22-CR-49-04 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

A *Fatico* hearing is scheduled in this case for Monday, March 6, 2023, at 10:00 am. The Court has received the parties' helpful pre-hearing letters. *See* Dkt. 92 (Government letter); Dkt. 96 (defense letter). This order is intended as guidance to counsel in advance of Monday's hearing.

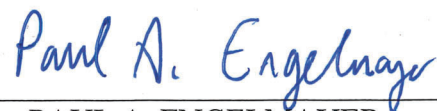
It does not appear from the pre-hearing letters that either party intends to offer live testimony. And counsel for each side has notified the Court's deputy that live testimony is not anticipated. It also does not appear that there will be any objections to the Court's receipt of any of the exhibits that the Government has furnished the Court in advance of the hearing, and which both sides have drawn upon in their pre-hearing letters. Accordingly, the Court anticipates that the *Fatico* hearing will begin with the offer by the Government, and – barring the unexpected – the unopposed receipt into evidence of these materials.

The Court will then entertain argument from each side, beginning with the Government, as to the import of the evidence received as to defendant Garcia. Without limiting the range of topics that counsel may choose to address, three issues are of particular interest to the Court:

1. Did Mr. Garcia lie during his proffer, including about whether his co-defendants robbed him on January 11, 2022?
2. If so, did such a lie, or lies, have the capacity to cause baseless criminal charge(s) to be brought against any or all of his co-defendants?
3. To the extent that a lie or lies to this effect are found, should these (a) affect the Guidelines calculation as to Mr. Garcia, including whether he should qualify for the safety valve, whether he is entitled to credit for acceptance of responsibility, and whether an obstruction of justice enhancement is in order; or (b) not affect the Guidelines calculation, but be considered by the Court to the extent bearing on one or more section 3553(a) factors?

The Court expects that the Government, in its argument on these points, will not be inhibited by its having entered into a plea agreement with the defense that contained a particular Guidelines calculation. The Court expects the Government to make a fresh assessment of the issues raised by the Court.

SO ORDERED.



---

PAUL A. ENGELMAYER  
United States District Judge

Dated: March 2, 2023  
New York, New York